

Apr 30, 2019

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

ROY D. CHEESMAN,

Plaintiff,

v.

KITTITAS COUNTY PROSECUTING
ATTORNEY GREGORY LEE ZEMPEL,
Defendant.

No. 1:19-cv-03060-SAB

**ORDER DISMISSING
COMPLAINT**

On April 3, 2019, Plaintiff filed a pro se Complaint, ECF No. 1, and also an accompanying Application to Proceed In Forma Pauperis, ECF No. 2. Magistrate Judge Rodgers denied Plaintiff IFP status due to Plaintiff's failure to provide the case number, name of court, the captioned name of the parties, a description, a status, and result of each case he had been a party to in the last 10 years. ECF No. 4, 9. On April 19, 2019, Plaintiff filed a supplement providing this information. ECF No. 10. A review of the supplement shows that Plaintiff has filed a number of lawsuits against various state officials that are pending or have been dismissed. Plaintiff was granted IFP status on April 29, 2019. ECF No. 11.

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1 the misconduct alleged. The plausibility standard is not akin to a
2 probability requirement, but it asks for more than a sheer possibility
3 that a defendant has acted unlawfully. Where a complaint pleads fact
4 that are merely consistent with a defendant's liability, it stops short of
5 the line between possibility and plausibility of entitlement to relief.
Ashcroft, 556 U.S. at 679 (citations and quotations omitted).

6 **42 U.S.C. § 1983**

7 Here, it appears that Plaintiff is bringing claims under 42 U.S.C. § 1983, as
8 well as a variety of other federal and state law claims.¹ 42 U.S.C. § 1983 creates a
9 cause of action against a person who, acting under color of state law, subjects
10 another to the deprivation of rights guaranteed by the Constitution. 42 U.S.C. §
11 1983. Under § 1983, a plaintiff must demonstrate that each named defendant
12 personally participated in the deprivation of his rights. *Jones v. Williams*, 297 F.3d
13 930, 934 (9th Cir. 2002). "A person 'subjects' another to the deprivation of a
14 constitutional right, within the meaning of section 1983, if he or she does an
15 affirmative act, participates in another's affirmative acts, or omits to perform an
16 act which he is legally required to do that causes the deprivation of which
17 complaint is made." *Johnson v. Duffy*, 588 F.2d 740, 743 (9th Cir. 1978) (citation

18 ¹ Plaintiff alleges that Defendant violated his "constitutional civil rights and
19 intentionally violated the United States Bills of Rights and the RCW of the State
20 of Washington under the first bills of rights, fourth bills of rights, sixth bills of
21 rights, eighth bills of rights, ninth bills of rights, fourteen bills of rights,
22 Conspiracy Against Rights 18 USC-241, deprivation of rights 18 U.S.C. 242, civil
23 rights violation 42 U.S.C. section 1983, RCW 9A.72.150, 1, 2, and 3, tampering with physical evidence,
24 RCW 33.36.060 spoliation of evidence, RCW 9A.36.120 assault of a child, RCW
25 9A.76.175 false and misleading statements to a public servant, RCW 42.20.040
26 false reports and RCW 33.36.060 Suppressing, secreting or destroying evidence or
27 records, Washington State RCW 36.27.020 (6), Washington State Code RCW
28 13.40.077(1)(g)(i)(2), Washington State Code RCW 9.94A.411
(1)(f)(i)(ii)(iii)(2)(a), Washington State Code RCW 9.94A.411(b)(i)(A)(B)(C)(ii),
Washington State Code RCW 26.44.030(8), RCW 5.60.060(5), RCW 9A.28.040,
RCW 9A.80.010, and Superior Court Criminal Rules CrR 4.7 discovery." ECF
No. 1.

1 omitted). “The requisite causal connection can be established not only by some
2 kind of direct personal participation in the deprivation, but also by setting in
3 motion a series of acts by others which the actor knows or reasonably should know
4 would cause others to inflict the constitutional injury.” *Id.* (citation omitted).

5 State prosecuting attorneys who act within scope of their duties in initiating
6 and pursuing criminal prosecution and in presenting the state’s case are absolutely
7 immune from civil suit for damages under 42 U.S.C. § 1983 for alleged
8 deprivations of an accused’s constitutional rights. *Imbler v. Pachtman*, 424 U.S.
9 409, 430 (1976). Absolute prosecutorial immunity is meant to “protect[] the
10 prosecutor from harassing litigation that would divert his time and attention from
11 his official duties” and to “enabl[e] him to exercise independent judgment when
12 ‘deciding which suits to bring and in conducting them in court.’” *Kalina v.*
13 *Fletcher*, 522 U.S. 118, 125 (1997) (quoting *Imbler*, 424 U.S. at 424).

14 **Plaintiff’s Complaint**

15 Plaintiff alleges that Defendant violated his constitutional rights by
16 Defendant’s actions in prosecuting him from December, 2016 until present day.
17 Plaintiff’s allegations focus on Defendant’s role in initiating the prosecution and
18 presenting the state’s case, duties that are afforded absolute immunity. As such,
19 there is no basis in law for Plaintiff’s claims. Moreover, the federal and state
20 criminal statutes identified by Plaintiff do not provide private causes of action.

21 **Leave to Amend**

22 Unless it is absolutely clear that amendment would be futile, a pro se litigant
23 must be given the opportunity to amend her complaint to correct any deficiencies.
24 *Lopez v. Smith*, 203 F.3d 1122, 1131 (9th Cir. 2002). In this case, however, the
25 Court declines to grant leave to amend. Based on his latest supplement pleading
26 identifying his prior complaints, the Court is concerned that Plaintiff is abusing his
27 *in forma pauperis* status and is using the federal courts to harass state officials.
28 Indeed, the Court notes that Plaintiff filed a virtually identical Complaint against

1 Kittitas County Prosecuting Attorney Jodi Hammond. *See Cheesman v. Hammond*,
2 1:19-cv-03059-SAB. Judicial resources that could be used to address meritorious
3 actions are being wasted on rehashing Plaintiff's claims against state officials who
4 participated in the removal of his children from his custody due to concerns for
5 their welfare. In this case, it is clear Plaintiff is suing Defendant based on
6 decisions he made as a prosecutor. There is no question these actions are afforded
7 absolute immunity and any amendments to the complaint will be futile.

8 Accordingly, **IT IS HEREBY ORDERED:**

9 1. Plaintiff's Complaint, ECF No. 1, is **dismissed**, with prejudice.

10 **IT IS SO ORDERED.** The Clerk of Court is directed to enter this Order,
11 forward copies to Plaintiff, and close the file.

12 **DATED** this 30th day of April 2019.



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A handwritten signature in blue ink that reads "Stanley A. Bastian". The signature is fluid and cursive, with a horizontal line drawn underneath it.

20 Stanley A. Bastian
21 United States District Judge
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